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DEC 14 2010

OFFICE OF PETITIONS

In re Application of
BEHROUZ POUSTCHI, ET AL.
Application No. 10/760,530
Filed: January 21, 2004
Attorney Docket No. 3655/0270PUS2

: DECISION REFUSING STATUS
: UNDER 37 CFR 1.47(a)

This is in response to the petition under 37 CFR 1.47(a), filed July 20, 2004. The delay in rendering a decision on this petition is regretted.

The petition is dismissed.

In view of the allowance of the claims in the instant application (see the **Notice of Allowance and Fees Due, mailed October 4, 2010**), petitioner is reminded that any renewed petition, correcting the below-noted deficiencies, must be submitted prior to issuance such that it is actually received and granted by the appropriate officials before the date of issue. Petitioner should also note that the mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.**

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks item (1) set forth above.

As to item (1), the applicable statute (35 U.S.C. § 116) requires that a "diligent effort" have been expended in attempting to find or reach the non-signing inventor. See MPEP 409.03(a). The showing currently fails to demonstrate, with a documented showing, that a diligent effort was made to find or locate non-signing inventor Ms. Natalie Ann Gagnon, such that the declaration can be accepted under 37 CFR 1.47(a). Where inability to find or locate a named inventor(s) is

alleged, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a *diligent effort* was made to locate the inventor.

Petitioner has not demonstrated that all efforts were expended in trying to locate non-signing inventor Ms. Gagnon. The instant petition indicates that Ms. Gagnon was contacted only at her employer's address that is different from Ms. Gagnon's last known address stated in the petition. In this regard, petitioner should, at the very least, mail correspondence to the inventor's last known address, return receipt and/or forwarding address requested. If a forwarding address is provided, petitioner should then mail a complete copy of the application papers (specification, claims, drawings, oath, etc.) to Ms. Gagnon's address, return receipt requested, along with a cover letter of instructions which includes a deadline or a statement that no response will constitute a refusal. This sort of ultimatum lends support to a finding of refusal by conduct. If the papers are returned and all other attempts to locate or reach the inventor, e.g., through personnel records, co-workers, E-mail, the Internet or the telephone, etc., continue to fail, then applicant will have established that the inventor cannot be reached after diligent effort or has refused to join in the application. **The statements of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein and should be accompanied by documentary evidence in support of the statement of facts.** It is important that the forthcoming communication contain statements of fact as opposed to conclusions.

Where there is an express or oral refusal, that fact, along with the time and place of the refusal, must be stated in an affidavit or declaration by the party to whom the refusal was made. The alleged refusal by the non-signing inventor, Ms. Gagnon, was not directly made to the petitioner or Mr. Pepin (see item 8 in the oath/declaration of Mr. Pepin). Where there is a written refusal, a copy of the document(s) evidencing that refusal must be made part of the affidavit or declaration.

When it is concluded by the rule 47 applicant that an omitted inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in an affidavit or declaration. If there is documentary evidence to support facts alleged in the affidavit or declaration, such evidence must be submitted.

Whenever an omitted inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration.

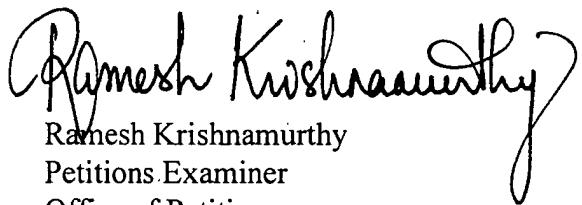
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Telephone inquiries should be directed to the undersigned at (571) 272-4914.



Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions